

1/17/13

From Philip

Various proposals and correspondence from last year's effort (provided for more detail and history).

My comments on this (raised bill HR 5147, see below) are (for those who haven't yet seen it, a copy of the bill as raised has been copied further down below):

1. First, it is a huge improvement over what we have.
2. Secondly, it is drafted and introduced (hooray!), kudos to those involved.

having said that ...

3. It should be expanded to include any translation of the word notary, not just Spanish as in pretty much all "civil law" countries, which is pretty much all the non-English speaking world (to a greater or lesser extent), the title notary conveys the same sense of government appointed super-lawyer.

4. It should require applicants for notary licenses to sign a plain-English statement that they understand they are not permitted to practice law at every point of contact with the Secretary of State's office (application, swearing in, renewals and any others). This certificate, or better yet, sworn statement, should give specific common examples (immigration, divorces, incorporations, etc., and perhaps even go into further detail: it is an unlawful act to tell someone which forms to fill out, or what the steps of the process are, etc.)

5. Neither the proposed bill nor §51-88 specifically prohibit the use of the word "notary" in English in conjunction with oral or written claims to assist with immigration, divorces, incorporations, etc.

6. Perhaps contradicting some of the ideas above, prohibiting the use of the word "notario" or any other translation, will make it impossible for such people to advertise any notarial services to the immigrant communities, limited though notary services may be. The result is that they will continue to use the foreign translations sub rosa, driving such activities further underground. The alternative, requiring an explicit explanation of what a notary is and isn't at each instance of use of a foreign translation (for example, "Not an attorney, Not a lawyer, Not permitted to give legal advice and Not authorized to practice law") forces them, when they inevitably communicate to their clientele, to communicate fully what it means and doesn't mean.

7. Second and subsequent violations should be enhanced to felonies §51-88 only provides for misdemeanor punishments; two hundred and fifty dollars or imprisoned not more than two months or both. I am told that law enforcement will continue to show little interest unless there is something to sink their teeth into.

8. For the same reason (law enforcement having little interest in such misdemeanors), the Secretary of State's own office and/or Chief Disciplinary Counsel's office should be given powers to pursue prosecution. At the very least the SOS's office should be explicitly given the power to threaten to pull licenses and pull licenses, a power I have been informed it does not feel it has now. It should further be empowered to publish such disciplinary actions in the local media and encouraged to send out press releases to to such media to generate interest in the problem, encourage more victims to step forward, and create a climate of intolerance for these abuses.

That's my two cents. Following is the current text of the bill.

Phil Berns

§ 51-88 - Practice of law by persons not attorneys

Current as of: 2009

(a) A person who has not been admitted as an attorney under the provisions of section 51-80 shall not: (1) Practice law or appear as an attorney-at-law for another, in any court of record in this state, (2) make it a business to practice law, or appear as an attorney-at-law for another in any such court, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he is a legal practitioner of law, or (7) advertise that he, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.

(b) Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. The provisions of this subsection shall not apply to any employee in this state of a stock or nonstock corporation, partnership, limited liability company or other business entity who, within the scope of his employment, renders legal advice to his employer or its corporate affiliate and who is admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the United States and is a member in good standing of such bar. For the purposes of this subsection, "employee" means any person engaged in service to an employer in the business of his employer, but does not include an independent contractor.

(c) Any person who violates any provision of this section shall be deemed in contempt of court, and the Superior Court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation.

(d) The provisions of this section shall not be construed as prohibiting: (1) A town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which the town clerk holds office; (2) any person from practicing law or pleading at the bar of any court of this state in his own cause; (3) any person from acting as an agent or representative for a party in an international arbitration, as defined in subsection (3) of section 50a-101; or (4) any attorney admitted to practice law in any other state or the District of Columbia from practicing law in relation to an impeachment proceeding pursuant to Article Ninth of the Connecticut Constitution, including an impeachment inquiry or investigation, if the attorney is retained by (A) the General Assembly, the House of Representatives, the Senate, a committee of the House of Representatives or the Senate, or the presiding officer at a Senate trial, or (B) an officer subject to impeachment pursuant to said Article Ninth.

----- Original Message -----

From: Ralph Monaco

(PEB Note of 1/14/13: Ralph is with CT Bar Assoc)

To: Philip Berns

Cc: Don Philips

Sent: Thursday, February 09, 2012 7:06 PM

Subject: RE: Proposed UPL Statute (& "Notarios")

Hi Phillip:

You make good suggestions here. I will bring them to the attention of the CBA Executive Committee, which submitted the language to the CBA Legislative Policy & Review Committee (LPRC) and CBA House of Delegates (HOD). One practical problem that we have is that any amendment has to go back to the Executive Committee, LPRC and HOD. The HOD does not meet again until mid March. I will present your proposal to the EC and let you know if there is interest in pursuing the amendment. Thank you for your continuing attention to this important issue. Ralph.

Please keep this under your hat outside of us (we two) CBA and CLS. This is as far as I have gotten so far (part I is proposed amendment to existing upl statute, the second is a conceptual outline of a more comprehensive approach.

Proposed UPL Statute (& "Notarios")

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Underlined only = proposed change in current language previously introduced by CBA in 2011

Underlined and italicized = proposed additional change by CBA this 2012

Underlined, bold and italicized = additional proposed change by Attorney Philip Berns 2012

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CBA Proposal to amend the Unauthorized Practice of Law Statute (as further amended by Philip Berns where underlined, bolded and italicized)

Section 1. Section 51-88 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) [A] Unless a person is providing legal services pursuant to statute or rule of court, a person who has not been admitted as an attorney under the provisions of section 51-80, or having been admitted under said section, has been disqualified from the practice of law due to resignation, disbarment, suspension for reason other than the failure to pay the occupational tax on attorneys imposed pursuant to section 51-81b or the client security fund fee imposed pursuant to section 51-81d, or being placed on inactive status, shall not: (1) Practice law or appear as an attorney-at-law for another [,] in any court of record in this state, (2) make it a business to practice law [,] or appear as an attorney-at-law for another in any such court, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself or herself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he or she is a legal practitioner of law, including by the use of any foreign language translation of the word "notary" without, immediately following such use, in the same font size and style, on the same line, and in the same foreign language, a clear and accurate translation of the words "Not an attorney, Not a lawyer, Not permitted to give legal advice and Not authorized to practice law", or (7) advertise that he or she, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.

(b) Any person who is admitted to practice law in another jurisdiction and who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. Any person who (1) is not admitted to practice law in another jurisdiction or (2) has been disbarred or suspended from another jurisdiction and has not been duly reinstated, and who violates any provision of this section shall be guilty of a class C felony. Any person who has been admitted to practice as an attorney in this state and who has been disbarred or suspended for any reason and has not been duly reinstated, except for an attorney who has been suspended solely for failure to pay the fee required by section 51-81d of the general statutes and who violates any provision of this section shall be guilty of a class C felony. The provisions of this subsection shall not apply to any employee in this state of a stock or nonstock corporation, partnership, limited liability company or other business entity who, within the scope of his or her employment, renders legal advice to his or her employer or its corporate affiliate and who is admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the United States and is a member in good standing of such bar. For the purposes of this subsection, "employee" means any person engaged in service to an employer in the business of his or her employer, but does not include an independent contractor. In any prosecution pursuant to section 53a-8 for an offense under this section and in any prosecution for conspiracy to commit an offense under this section, the state shall have the burden of proving that the defendant had actual knowledge that the person who committed the offense under this section was not authorized to practice law in any jurisdiction at the time of such offense.

(c) Any person who violates any provision of this section shall be deemed in contempt of court, and the Superior Court shall have jurisdiction in equity upon the

petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation.

(d) The provisions of this section shall not be construed as prohibiting: (1) A town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which the town clerk holds office; (2) any person from practicing law or pleading at the bar of any court of this state in his or her own cause; (3) any person from acting as an agent or representative for a party in an international arbitration, as defined in subsection (3) of section 50a-101; or (4) any attorney admitted to practice law in any other state or the District of Columbia from practicing law in relation to an impeachment proceeding pursuant to Article Ninth of the Connecticut Constitution, including an impeachment inquiry or investigation, if the attorney is retained by (A) the General Assembly, the House of Representatives, the Senate, a committee of the House of Representatives or the Senate, or the presiding officer at a Senate trial, or (B) an officer subject to impeachment pursuant to said Article Ninth.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline].

and

Legislative concept to deal with notary abuses of UPL statutes (VERY draft form, unedited to date - 2//9/12)

Dear Alex:

You asked me for a conceptual description of what we would like the legislation to cover. Here it is as follows:

Whereas in the English-speaking world the word 'notary' has a very limited meaning. In the rest of the world, the title 'notary' (for example, 'notario' in Spanish or 'notaire' in French, etc. to throughout northern, southern, eastern and western Europe) has much greater significance and involves greater training and experience and includes the same powers as an attorney and more. Here in the State of Connecticut, especially in the Spanish-speaking community but also exists elsewhere, the foreign language translation of the word 'notary' (for example 'notario' and 'notaire' as described above) is being used to either deliberately mislead people into believing that the notary has greater powers than they do or, unintentionally and/or passively end up doing so anyway.

Whereas in the widespread experience of attorneys that notaries who are involved in the unlawful practice of law (UPL) tend to fall into one of two categories:

1. those that are extremely abusive and are charging three, four, five and 10 times more than legitimate attorneys are charging, they promise results that frequently are unattainable, and frequently end up putting people in a far worse situation than they started out in; and

2. notaries who in fact make an effort to study the law, charge half or a third of what a legitimate attorney would charge, and, while they frequently get things right, sometimes get them wrong and in any case are practicing law without a license in the State of Connecticut.

Therefore, we have come up with some of the following ideas:

1. that any use of a foreign language translation of the word 'notary' should include immediately following such use, in the same font size and style, on the same line, and in the same foreign language, a clear and accurate translation of the words **"Not an attorney, Not a lawyer, Not permitted to give legal advice and Not authorized to practice law"**

2. the Connecticut governmental office that issues notary licenses is the Secretary of State's Office; while they are the only ones with the power to issue notary licenses, it is their interpretation of the law that they do not have the authority to:

- a) threaten to revoke a license; or
- b) revoke licenses

We propose that the Secretary of State's Office be given the power to:

a) require applicants in their initial application to make a sworn statement that they will not practice law unlawfully without a license and include specific examples that they will not do divorce papers, not do immigration papers, not do incorporation papers, etc.

b) that the applicants make the same sworn statement at the time they take the notary test

c) that every several years when they renew their licenses that they again make a sworn statement that they understand that the law prohibits these things and they are not doing it

We propose to give the Secretary of State's office the power to:

a) send warning letters to notaries for whom they have any evidence that may be practicing law without a license. This would include something as simple as an advertisement or sign on their property

b) be granted a wide range of disciplinary actions, including the power to revoke licenses, make notices in the media about the revocation of a notary's license, etc.

Because the unlawful practice of law is only a misdemeanor and not a very dramatic crime here in the State of Connecticut, law enforcement in the State of Connecticut, with the exception of the Chief Disciplinary Council's Office, are reluctant to bother to investigate or to prosecute this crime. In fact, in the experience of at least one person at the Chief Disciplinary Council's Office, there had to be extensive evidence of extreme abuse involving hundreds of thousands of dollars before local police in Stamford moved against an abusive notary in Stamford and even then, he was put on probation and went right back to business as usual with few consequences.

We therefore recommend that a second violation of the unlawful practice of law statutes be considered a felony.

Sincerely yours,

Philip Berns
Philip Berns (R)

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----- Original Message -----

From:

To: Philip Berns

Sent: Thursday, February 02, 2012 10:47 PM

Subject: Re: Proposed UPL Statute (& "Notarios")

Everyone seemed to be focused on the budget last year. We had the support of the Chief State's Attorney, Kevin Kane, and then Chief Disciplinary Counsel, Mark Dubois. Hopefully we will be successful this year. The proposal I sent you is slightly modified from last year. We added a provision to require actual knowledge for a charge of conspiracy, as a result of concern by business lawyers who negotiate deals over state lines.

As you know, prosecutors do not want to spend their time pursuing class C misdemeanors. This proposal will increase the penalty to "notarios" and other non-lawyers who deceive the public. It would be wonderful to work with you on this proposal!

Sincerely,
Ralph

I have a statewide, and to a lesser degree, a regional database of notarios. Yes, there are several active, some to a lesser others to a greater degree, in the Stamford/Norwalk area. I will have legislation introduced this year to try to stem the problem, but it has to be sent up to Hartford by noon Friday (tomorrow). CLS support would be really really good. We need to talk. The sooner the better.

Please call me (my personal private, please-don't-give-it-out cell number is 203 722 0488).

Philip Berns (R)

----- Original Message -----

From: Massiel Zucco

To: 'philipberns@sbcglobal.net'

Sent: Wednesday, February 08, 2012 5:32 PM

Subject: Notarios

Hi Philip,

Connecticut Legal Services has recently been meeting with several elected officials regarding our funding crisis. In one of those meetings, the topic of notarios came up. I know that this is an issue that you've been involved with. Could you give me any "on the ground" information about how this issue plays out locally (in Stamford)? Is it a problem we see frequently? What types of problems do you see? Also, I know there was a recent attempt to limit the work they do. Was that effort successful? Any information you could provide would be helpful.

Thanks,

Massiel Zucco

Connecticut Legal Services

----- Original Message -----

From: Philip Berns

To:

Sent: Friday, February 03, 2012 12:00 PM

Subject: Re: Proposed UPL Statute (& "Notarios") - Better copy (corrected some typos, clarified a little

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[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline].

Philip Berns (R)

From: Philip Berns [mailto:philipberns@sbcglobal.net]

Sent: Tuesday, November 29, 2011 4:52 PM

To:

Subject: UPL and "Notaries"

Mr. ____:

I practice Immigration law as a solo practitioner in Stamford. Immigration practitioners nationally, and Connecticut is not exception, run across a problem we call "notarios", which, as you may know, are people who misuse the spanish translation of the word notary to mislead Spanish-speakers into believing they are attorneys or otherwise licensed to do more than they are.

I have been speaking to my local state representatives about this problem for some time and one even tried to pass some legislation on the matter last year. It has also occurred to me that the Secretary of State's office could informally accomplish quite a bit simply by making more explicit the prohibitions against the Unauthorized Practice of Law and enforcing them from time to time.

I would very much appreciate an opportunity to speak with you some time in the near future. I will try to call you tomorrow.

Philip Berns (R)

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June 2011

Dear ____:

I just wanted to send a little note to let you know what a great pleasure it was to meet you at ____ on June 4th at _____. Who would have thought that you would sit next to me and you might find an interesting story and I might find, at long last, an effective outlet to get the word out about this problem ____ of the State of Connecticut Secretary of State's Notary Licensing Bureau not put[ting] notaries on specific notice that the word 'notario' ____ [is] not permitted [and that] to perform the unauthorized practice of law and, specifically, put them on notice, perhaps even having them sign a sworn statement that they will not undertake services in:

- a) immigration
- b) incorporations
- c) divorces

or provide any other legal services or legal advice and counsel.

As I mentioned, I have correspondence going back several years with ____ [of the Secretary of State's office] ____ in which I have on numerous occasions cut out explicit advertisements by notarios for such services and asked him to please take appropriate action _____. I have all that

correspondence. However, I do not still have the articles, but in my correspondence specify what paper or Yellow Page book, date, etc.

If you're still interested in pursuing this story, I would be most pleased to assist you in any way that I can.

Sincerely yours,